

<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

On December 19, 2013 appellant, then a 54-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that on November 20, 2013 he sustained a lower back strain due to picking up a tray of mail which had fallen to the floor. He stopped work on November 30, 2013. Appellant first sought treatment on December 3, 2013.

An OWCP Form CA-16, authorization for examination, dated December 9, 2013, indicated that appellant was authorized to visit a Veterans Administration Hospital in Birmingham, AL.<sup>2</sup> On the second page of the form dated December 20, 2013, a physician<sup>3</sup> reported that appellant bent over at work and felt a back strain. The physician noted review of x-rays and diagnosed acute lower back pain. The physician checked a box marked “yes” when asked if he believed the condition was caused or aggravated by the employment incident.

In support of his claim appellant submitted December 4, 2013 discharge instructions from St. Vincent’s Birmingham emergency room; a December 3, 2013 disability note;<sup>4</sup> a disability note and report dated December 6, 2013 from Dr. Cheryl M. Law, a treating Board-certified family medicine practitioner; and an unsigned December 17, 2013 duty status form (Form CA-17).

A December 20, 2013 progress report by Dr. Matthew Skinner, a primary care resident, which was cosigned by Dr. Terrence M. Shaneyfelt, a Board-certified internist, diagnosed low back pain and probable lumbar disc herniation. The report noted that appellant sustained a twisting injury at work on November 23, 2013, provided examination findings, and listed appellant’s complaints.

A December 28, 2013 magnetic resonance imaging (MRI) scan revealed left-sided L4-5 intraforaminal disc herniation.

By letter dated January 9, 2014, OWCP informed appellant that the evidence of record was insufficient to establish his claim. Appellant was advised as to the medical and factual evidence required and was afforded 30 days to provide this information.

OWCP subsequently received a December 20, 2013 medical treatment form (Form CA-17)<sup>5</sup> and a February 3, 2014 attending physician’s report (Form CA-20). The Form CA-17 provided work restrictions, history of injury, and diagnosis of 722.93, and checked next to a box marked “yes” that the diagnosed condition corresponded with the history of injury given by appellant.

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<sup>2</sup> A properly completed Form CA-16 authorization may constitute a contract for payment of medical expense to a medical facility or physician, when properly executed. The form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. See 20 C.F.R. § 10.300(c); *Tracy P. Spillane*, 54 ECAB 608 (2003).

<sup>3</sup> The signature on the form is illegible.

<sup>4</sup> The last name listed is not totally legible.

<sup>5</sup> The signature on the form is illegible.

In the Form CA-20, Dr. Shannon Williams, a treating physician, and Dr. Teresa Bryan, a treating Board-certified internist, diagnosed left L4 radiculopathy, L4-5 intervertebral disc herniation, and disc bulge. They opined that appellant was totally disabled from work commencing December 3, 2013 and ongoing. A history of the November 20, 2013 injury and physical examination findings were given.

By decision dated February 11, 2014, OWCP denied appellant's claim as it found the evidence insufficient to establish a causal relationship between the diagnosed lumbar conditions and the November 20, 2013 incident.

In a form dated March 4, 2014, appellant requested a telephonic hearing before an OWCP hearing representative, which was held on September 22, 2014.

In a March 10, 2014 form report, Drs. Bryan and Williams diagnosed left-sided L4-5 intraforaminal disc herniation with nerve root compression and radicular pain, which they attributed to a November 23, 2013 employment incident.

In an April 10, 2014 report, Dr. Martin P. Jones, a treating Board-certified orthopedic surgeon, provided physical examination findings and employment injury history and reviewed objective tests. He diagnosed L4-5 extruded lateral disc herniation with L4 nerve root compression and recommended surgery.

In a May 9, 2014 report, Drs. Bryan and Williams diagnosed lumbar radiculopathy which they attributed to appellant bending over at work to pick up a tray. They observed that appellant has had sharp shooting pain radiating into his left leg and constant left-sided back pain since the November 2013 bending over and lifting incident. Drs. Bryan and Williams noted that prior to the November 2013 employment incident appellant had no problems with the duties of his job, but since the incident has experienced significant pain, difficulty walking, and substantial decrease in his quality of life. They opined that appellant met all of the criteria to establish that his diagnosed lumbar condition had been caused by the employment incident and was entitled to benefits.

By decision dated November 5, 2014, an OWCP hearing representative affirmed the denial of appellant's claim.

In a letter dated October 16, 2015, appellant's counsel requested reconsideration. In support of his request, counsel resubmitted a May 9, 2014 report and a February 3, 2014 Form CA-20 report from Drs. Bryan and Williams.

By decision dated November 3, 2015, OWCP denied reconsideration.

### **LEGAL PRECEDENT**

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,<sup>6</sup> OWCP's regulations provide that a claimant must: (1) show that OWCP erroneously applied or

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<sup>6</sup> 5 U.S.C. § 8128. Section 8128(a) of FECA provides that the Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application.

interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by OWCP; or (3) constitute relevant and pertinent new evidence not previously considered by OWCP.<sup>7</sup> To be entitled to a merit review of an OWCP decision denying or terminating a benefit, a claimant's application for review must be received by OWCP within one year of the date of that decision.<sup>8</sup> When a claimant fails to meet one of the above standards, OWCP will deny the application for reconsideration without reopening the case for review on the merits.<sup>9</sup>

### ANALYSIS

The issue presented on appeal is whether appellant met any of the requirements of 20 C.F.R. § 10.606(b)(3), requiring OWCP to reopen the case for review of the merits of the claim. In his October 16, 2015 application for reconsideration, appellant did not show that OWCP erroneously applied or interpreted a specific point of law. He did not advance a pertinent and relevant new legal argument not previously considered by OWCP. Counsel's argument is that appellant's lumbar injury was causally related to the November 20, 2013 employment incident. That is a medical issue which must be addressed by relevant medical evidence.<sup>10</sup>

In support of his October 16, 2015 reconsideration request, counsel resubmitted the May 9, 2014 report and the February 3, 2014 Form CA-20 report by Drs. Bryan and Williams. He also resubmitted appellant's CA-1 form. The Board finds that the resubmission of evidence already of record is insufficient to warrant reopening appellant's case for merit review. As these reports repeat evidence already in the case record, they are duplicative and do not constitute relevant and pertinent new evidence.<sup>11</sup>

The Board accordingly finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(3). Appellant did not show that OWCP erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by OWCP, or submit relevant and pertinent new evidence not previously considered. Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

On appeal, counsel contends that OWCP's decision was contrary to fact and law. Based on the findings and reasons stated above, the Board finds counsel's arguments are unsubstantiated.

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<sup>7</sup> 20 C.F.R. § 10.606(b)(3). See *J.M.*, Docket No. 09-218 (issued July 24, 2009); *Susan A. Filkins*, 57 ECAB 630 (2006).

<sup>8</sup> *Id.* at § 10.607(a).

<sup>9</sup> *Id.* at § 10.608(b). See *Y.S.*, Docket No. 08-440 (issued March 16, 2009); *Tina M. Parrelli-Ball*, 57 ECAB 598 (2006).

<sup>10</sup> See *Bobbie F. Cowart*, 55 ECAB 746 (2004).

<sup>11</sup> See *L.T.*, Docket No. 09-1798 (issued August 5, 2010); *D.K.*, 59 ECAB 141 (2007); *D'Wayne Avila*, 57 ECAB 642 (2006).

**CONCLUSION**

The Board finds OWCP properly refused to reopen appellant's case for further review of the merits pursuant to 5 U.S.C. § 8128(a).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated November 3, 2015 is affirmed.

Issued: June 24, 2016  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board